

MEMORANDUM OF LAW

DATE: December 14, 1993

TO: Kent B. Lewis, Assistant Personnel Director

FROM: City Attorney

SUBJECT: Retroactive Salary Adjustments

You have asked me to clarify whether a legal opinion recently issued by our office has any impact upon the processing of retroactive salary adjustments.

On August 31, 1993, the City Attorney issued a Memorandum of Law directed to the Auditor and Comptroller's Department related to the legality of processing a proposed retroactive salary increase (see attached). In a nutshell, we advised that the retroactive award of extra compensation to a public employee or public officer is a gift of public funds, prohibited by Article XI, Section 10 of the California Constitution. In the context of this provision of the Constitution, "extra compensation" means money that the City is not contractually or legally obligated to pay to the public officer or employee.

I understand that the above referenced opinion has caused the Personnel Director some concern with respect to the processing of retroactive salary adjustments in those situations when extra pay is being requested in connection with such things as past performance of overtime duty or out-of-class assignments. Specifically, you ask whether the Personnel Director should require extra documentation in connection with these requests to ensure that the extra pay requested is not "extra compensation" prohibited by the City Charter or the Constitution.

As you know, pursuant to section 126 of the City Charter, the Personnel Director is responsible for certifying the accuracy of the payroll. Since it would be an impossible task for the Personnel Director to have personal knowledge regarding the accuracy of every employee's account, his obligation under the Charter is fulfilled by relying upon trained payroll clerks in each department of the City and procedural safeguards which are mandated upon all City employees. One such safeguard is the requirement that a time card be submitted by every employee with its accuracy certified by a signature from both the employee and

the employee's supervisor. Courts have held that an employee or supervisor is personally accountable under the law for the illegal disbursement of public funds if he or she signs a time card knowing it contains false information. See *People v. Theresa Groat*, 93 Daily Journal D.A.R. 13682.

Although it is entirely within the prerogative of the Personnel Director to establish procedures to ensure the accuracy of the payroll, I see no compelling legal reason to process routine salary adjustments differently from routine payroll. So long as the employee and employee's supervisor are required to certify the legitimacy of a salary adjustment by signing a Time Sheet Correction Notice and a Payoff Identification Form, the Personnel Director should not be exposed to any legal liability under the City Charter or the California Constitution for reasonably relying upon that procedure.

However, I would caution you that it is probably not reasonable for the Personnel Director to rely merely upon the established procedural safeguards if the adjustment requested is highly unorthodox (i.e. unusually large or several months old) or if the Personnel Director is otherwise aware of facts leading him to suspect the accuracy or legitimacy of the claim for payment. In that situation, it would be prudent and advisable for the Personnel Director to require the submittal of additional documentation to ensure that the City is contractually or legally obligated to pay the extra amount of salary claimed.

If you need further clarification, do not hesitate to contact me.

JOHN W. WITT, City Attorney

By

Richard A. Duvernay

Deputy City Attorney

RAD:lc:330(x043.2)

Attachment

ML-93-108

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